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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,572

06/12/2006

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WUE-56

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10/13/2009

EXAMINER

BONZELL, PHILIP J

ART UNIT

PAPER NUMBER

3644

MAIL DATE

DELIVERY MODE

10/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,572	<b>Applicant(s)</b> SCHERER ET AL.	
	<b>Examiner</b> PHILIP J. BONZELL	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/8/2009 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear and therefore indefinite how both a device and an electro-mechanical control device are used to move the movable element between a first and second position.
3. Claim 17 recites the limitation "the device" in line 11. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11-14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwarzler (US Patent #3991782).

a. For Claims 11, 13, 14, and 17, figure 3 of Schwarzler '782 discloses a ram air channel for an aircraft comprising a first air inlet (21) with a constant flow cross-section, a main flow channel (2) extending downstream of the first air inlet (21), a second air inlet (22) independent from the first air inlet, a movable element (3) in the form of a flap that rotates about an axis (9) for setting a flow cross section of the second air inlet (22), the movable element (3) being movable between a first at least partially open position and a second closed position, and a device (the engine) for creating low pressure in the area of the second air inlet, the device including at least a pump (it is inherent that jet engines have pumps and that the engine itself creates a low pressure area so as to pull air into the engine), so as to move the movable element (3) into a first position to at least partially open the flow cross-section of the second air inlet (22). Figure 2 of Schwarzler '782 and column 2, lines 63-67 teaches, "The flap 3 is hinged to the wall structure of duct 2 by means of a hinge 9. For low pressure in the duct, i.e. during takeoff and during low speed cruising, flap 3 swings inwardly thus opening

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the secondary opening 22 (FIG. 3).” Thus the duct wall (2) creates a low pressure in the area of the second inlet (22).

b. For Claim 12, figure 3 of Schwarzler ‘782 discloses that the second air inlet (22) is connected to the main flow channel (2) by a side channel which is at a predetermined angle to the main flow channel (2).

c. For Claim 16, figure 3 of Schwarzler ‘782 discloses a mechanical device (4) operable to hold the movable element (3) in the first position to at least partially open the flow cross-section of the second air inlet (22) or in a second position to shut the flow cross-section of the second air inlet (22).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarzler (US Patent #3991782) as applied to claim 11 above, and further in view of Bullock (US Patent #3302657). Schwarzler ‘782 is silent about the use of an electro-mechanical control device to operate the movable element between a first and second position, however, the only figure of Bullock ‘657 teaches an electro-mechanical device (16) that operates a movable element (4) between a first and second position. Therefore it would have been obvious to someone of ordinary skill in the art at the time of the invention to

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modify Schwarzler '782 with the motor of Bullock '657 in order to accurately control the movable element so that a precise amount of air can be allowed to enter the engine.

***Response to Arguments***

6. Applicant's arguments filed 12/8/2009 have been fully considered but they are not persuasive. Schwarzler '782 has now been used to make a 102 rejection for the independent claims. With respect to the argument that Schwarzler '782 is silent about teaching a device that is either a pump or blower, the Examiner respectfully disagrees. An aircraft engine inherently is a pump that creates a low pressure area so that air is pulled into the engine so that it can be mixed with fuel and burned.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. BONZELL whose telephone number is (571)270-3663. The examiner can normally be reached on M-Th 8-5;.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. J. B./  
Examiner, Art Unit 3644

pjb  
/Tien Dinh/  
Primary Examiner, Art Unit 3644